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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,203	09/05/2003	Darrell E. Melvin	22833.00	7001

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EXAMINER

FISCHMANN, BRYAN R

ART UNIT PAPER NUMBER

3618

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding:

Office Action Summary	Application No. 10/655,203	Applicant(s) MELVIN	
	Examiner Bryan Fischmann	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-14 is/are allowed.
- 6) ☒ Claim(s) 15, 17, 18 and 20 is/are rejected.
- 7) ☒ Claim(s) 16 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09-05-03</u> . | 6) <input type="checkbox"/> Other: _____ |

Specification

1. The specification is objected to because of the following:

A) The following recited phrases are unclear, awkwardly worded, and/or grammatically incorrect:

1) Line 13 of page 11 recites "British Patent Publication No. 2,25 1,828 published...". The "gap" between the numbers "5" and "1" in the above patent number should be eliminated.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tucker, US Patent 6,059,298.

Tucker teaches a mechanic's creeper, comprising:

a hollow tubular frame assembly (11 or 12) having at least a left side member, a right side member, a head crossmember (Figure 4), and a foot crossmember (21);

a back rest pad (14) secured to said main frame; and

a left and a right head end wheel, and a left and a right foot end wheel (Figure 4), the wheels depending from said frame assembly.

Tucker fails to teach a storage and carrying case configured for storing and

Art Unit: 3618

carrying therein, at least said frame assembly including said back rest pad and each said wheel.

However, the Examiner takes Official Notice that virtually all merchandise is shipped in boxes from the manufacturer to the purchaser or to a retail store. The boxes are necessary to facilitate transportation and shipping. Merchandise in boxes may be seen at virtually any store, such as Home Depot, for example. Regarding the claim 15 limitation "storage and carrying case", it is noted this limitation is drawn toward "intended use" of the claimed invention. The functional recitation of intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the function or intended use, then it meets the claim. *In re Casey*, 370 F.2d 576, 152 USPQ 235, 238 (CCPA 1967). It is the Examiner's position that the prior art is capable of performing the intended use, as the box used for shipping may also be used for storage and carrying of the creeper of Tucker. Regarding the term "case" note that Webster's Collegiate Dictionary, 10th Edition defines "case" as: "a box or receptacle for holding something".

Once this prima facie case has been established, the burden shifts to the applicant to show that the prior art structure does not possess the functionally defined or intended use limitations of his claimed apparatus. *In re Schreiber*, 128 F.3d 1473, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

Art Unit: 3618

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a storage and carrying case in combination with the creeper of Tucker.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tucker, US Patent 6,059,298, in view of Happ, US Patent 2,487,706.

Tucker fails to teach a tool and equipment storage compartment disposed between said left side member and said right side member of said frame assembly, and below said back rest pad.

However, Happ teaches a tool and equipment storage compartment (20) disposed between a left side member and said right side member of said frame assembly, and below a back rest pad (Figures 1 and 2). A tool and equipment storage compartment is advantageous in that tools and equipment may be conveniently placed proximal the creeper, which facilitates location and use by a mechanic utilizing the creeper.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a tool and storage equipment compartment in the creeper of Tucker, as taught by Happ.

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tucker, US Patent 6,059,298, in view of Morris, US Patent 4,986,558.

Tucker fails to teach a left and a right arm rest removably attached respectively to said left side member and said right side member of said frame assembly.

However, Morris teaches a left and a right arm rest (30 – see also comments below) removably attached (by 28 and 29) respectively to said left side member and said right side member of a frame assembly (see drawing figures). An arm rest as taught by Tucker is advantageous in that it allows the installation and use of work lamps (50). The arm rest of Tucker is also advantageous in that it allows support for the arms and a place to place tools and other equipment.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a left and right arm rest in the creeper of Tucker, as taught by Morris.

Regarding the term “arm rest” recited in claim 18, note that this term is directed toward “intended use”. The comments regarding “intended use” set forth in the above claim 15 rejection also apply to the recitation of “arm rest” in claim 18.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tucker, US Patent 6,059,298, in view of Nicholson, US Patent 5,330,211 and Chen, US Patent 5,494,305.

Tucker fails to teach at least one adjustably positionable work light extending from said frame assembly adjacent said head crossmember thereof; and a warning light removably attached to said frame assembly.

However, Nicholson teaches at least one adjustably positionable work light (50) extending from said frame assembly adjacent said head crossmember thereof (Figure 3). An adjustably positionable work light is advantageous in that a work light facilitates the mechanic being able to view an underside of a vehicle and the “adjustability feature”

Art Unit: 3618

is further advantageous in that it allows the mechanic of direct the work light toward the area of the vehicle of interest.

Also, Chen teaches a warning light (5) removably attached (51) to a frame assembly (Figure 2). A warning light that is removably attached to a frame assembly is advantageous in that allows the mechanic, or vehicle operator to warn others that he is underneath a vehicle. This is advantageous whether a mechanic is utilizing the creeper inside a shop and wants to let his fellow workers know that he is underneath the vehicle, or whether a passenger is utilizing the creeper on a roadside and wants to alert other motorists of his presence.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize an adjustably positionable work light in the creeper of Tucker, as taught by Nicholson. It also would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a warning light in the creeper of Tucker, as taught by Chen.

Allowable Subject Matter

7. Claims 1-14 are allowed.
8. Claims 16 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Allowance

10. The following is an Examiner's statement of reasons for allowance of independent claims 1 and 8:

Claim 1 recites the limitation of a mechanic's creeper, comprising; a hollow tubular main frame having at least a left side member, a right side member, a frame extension having at least a left side member, a right side member, with the left side member and the right side member of said frame extension telescopingly disposed respectively within the left side member and the right side member of said main frame; and a buttocks support cushion removably attached to said frame extension. This limitation, in combination with the other limitations of claim 1, were not found in the prior art.

Claim 8 recites the limitation of a mechanic's creeper, comprising; a hollow tubular frame assembly having at least a left side member, a tool and equipment storage compartment disposed between the left side member and the right side member of said frame assembly, a back rest pad hingedly secured to one of the side members of said frame assembly and over said tool and equipment storage compartment. This limitation, in combination with the other limitations of claim 8, were not found in the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3618

Zimmerman, Stanton, Martell, Chamberlin, Jr., et al, Scott, et al, Whitside and
Berry – teach creepers

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (571) 272-6694. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis, can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 5-14-5
BRYAN FISCHMANN
PRIMARY EXAMINER